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January 24, 2017

By ECF/Email

Honorable Edgardo Ramos
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: United States v. El Gammal
15 Cr. 588 (ER)

Hon. Judge Ramos,

We propose the following conscious avoidance instruction, adapted from the Sand instruction:

"In determining whether the defendant acted knowingly, you may consider whether the defendant deliberately closed his eyes to what would otherwise have been obvious to him. If you find beyond a reasonable doubt that, during the relevant time period, the defendant acted with a conscious purpose to avoid learning the truth that Samy El-Goarany intended to join ISIS, then this element may be satisfied. However, guilty knowledge may not be established by demonstrating that the defendant was merely careless, negligent, or reckless.

If you find that, during the relevant time period, the defendant was aware of a high probability that Samy El-Goarany intended to join ISIS and that the defendant acted with deliberate disregard of that high probability, you may find that the defendant acted knowingly. However, if you find that the defendant actually believed that Mr. El-Goarany did not intend to join ISIS, he may not be convicted.

Hon. Edgardo Ramos
United States District Judge
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It is entirely up to you whether you find that the defendant deliberately closed his eyes and any inferences to be drawn from the evidence of this issue.

I want to caution you that the instruction I have just given applies only to the element of knowledge, not to the element of intent. One cannot join a conspiracy unless the person is aware of its existence and specifically intends to do so."

Respectfully submitted,

/s/
Habib/Shroff/Miron
Assistant Federal Defenders

cc: Govt counsel (via email)
Mr. Ahmed M. El Gammal, (via mail)